

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 4th day of June 1998

B E F O R E

THE HON'BLE MR. JUSTICE V. GOPALAGOWDA

WRIT PETITION No.14632/1994

BETWEEN :

1. Sri Vasant Ramachandra Kulkarni,  
(Huddar), since deceased by  
his L.Rs.,
  - a. Laxmi Vasant Huddar,  
Major, Shindihatti,  
Taluka Hukkeri,  
Dist: Belgaum.
  - b. Kumar Purnendra Vasant  
Kulkarni @ Huddar,  
minor by his guardian,  
Smt. Laxmi Vasant Huddar,  
R/o. Shindihatti,  
Taluka Hukkeri,  
Dist: Belgaum.
2. Hanumanth Ramachandra Kulkarni,  
(Huddar) Major,
3. Babu @ Bhimrao Ramachandra  
Kulkarni (Huddar), Major,  
since deceased by his L.Rs.,
  - a. Smt. Padmavathi,  
Major, w/o. Babu @  
Bhimrao Kulkarni (Huddar),
  - b. Dattatreya Bhimrao  
(Huddar) Kulkarni,  
S/o. Bhimrao Kulkarni,  
Major,

c. Arun Bhimrao Kulkarni  
(Huddar), Major,  
S/o. Bhimrao Kulkarni,

4. Bhanu @ Madhava Ramachandra  
Kulkarni (Huddar), Major,

All the petitioners are the  
R/o. Shindihatti,  
Hukkeri Taluk,  
Dist: Belgaum.

.. PETITIONERS

(By Sri. G. Balakrishna Shastry, Adv.)

AND :

1, The Land Tribunal,  
Hukkeri,  
by its Chairman,  
Hukkeri,  
Dist: Belgaum.

2. The State of Karnataka,  
by the Secretary to  
Revenue Department,  
Vidhana Soudha,  
Bangalore-1.

3. Hemanna Bheemappa Sheravi,  
Major, since deceased by  
his L.Rs.,

a. Parisa Hemanna Sheravi,  
Major,

b. Dhanapal Hemanna Sheravi,  
Major,

c. Shiddappa Hemanna Sheravi,  
Major,

d. Smt. Godavva, Major,  
D/o. Hemanna Sheravi,

e. Smt. Sonnavva Kom Bhinappa  
Kamati, Major,  
R/o. Belavi Taluka Hukkeri,  
Dist: Belgaum.

3. f. Smt. Taravva Kom  
Hemanna Kamate, Major,

R-3(a) to (d) and (f) are  
residing at Shindihatti,  
Hukkeri Taluka,  
Dist: Belgaum.

.. RESPONDENTS

(By Sri. Anantha Mundargi for R1 & 3,  
Mrs. Bharathi Nagesh for R1 & 2)

.. .. .

This Writ Petition was earlier filed as Civil Petition under Sec.151 of CPC r/w. under Section 17 of the K.L.R. Act, r/w. Articles 226 & 227 of the Constitution of India with a prayer to consider this application and appeal No. RALR.60/87 filed before the Land Reforms Appellate Authority, Chikodi, Belgaum Dist. as a Writ Petition in view of amendment of Section 17 of the Land Reforms Act.

This Writ Petition coming on for hearing this day, the Court made the following:-

### O R D E R

The petitioners-land owners are before this Court challenging the impugned order passed by the I respondent-Tribunal urging the following grounds:

The impugned order is not preceded by an enquiry as contemplated under Rule 17 of the Karnataka Land Reforms Rules, 1974 (in



short 'the Rules') read with Section 34 of the Karnataka Land Revenue Act, 1964 thereby adequate and reasonable opportunity was not given to him to show that the land in question is not a tenanted land therefore, the impugned order is vitiated in law. Further it is contended that the I respondent-Land Tribunal has not properly and correctly interpreted Section 2 (34), 44 and 45 of the Karnataka Land Reforms Act thereby it has caused substantial injustice to the petitioner. Further, it is contended that observation of the Tribunal in the impugned order that the petitioners have admitted the tenancy of the deceased III respondent is not correct and the said finding is disputed. It is further urged that the Tribunal has not given a finding to the effect that the deceased III respondent was cultivating




the land in question lawfully as tenant immediately prior to 1-3-1974 or as on 1-3-1974 and no evidence is adduced to that effect and therefore the impugned order is bad in law.

2. Learned counsel appearing for some of the legal representatives i.e., 3(b) to 3(f) submits that the impugned order is legal and valid. The Tribunal has granted occupancy rights based on the admission made by the petitioners before it stating that deceased III respondent has been cultivating the land in question from 1956 and further they have stated that they wanted lands for their personal cultivation. The said finding of fact recorded by the Tribunal based on evidence on record is presumed to be correct, unless it is



rebutted by the petitioners by placing proper evidence on record. Learned counsel appearing for the contesting respondents further submits that it is undisputed fact that III petitioner initiated proceedings in RRC No.92/71 before the Court of Munsiff at Hukkeri against the father of III respondent herein for recovery of the rent from the lands in question in which proceedings, it has been specifically stated <sup>that applicant</sup> the ~~tenant~~ who is the deceased III respondent is a tenant of full share of the applicant therein who is the owner to an extent of 4 acres 3 guntas. This fact is not disputed. Therefore, the ground urged by the learned counsel for the petitioners that the finding recorded by the Tribunal with regard to the admission made by them in respect of the land in question stating that the father of the res-



pondent was a tenant in the year 1956 which fact is further borne out from the proceedings initiated by III petitioner before the Munsiff's Court at Hukkeri under the provisions of Section 42(2) of the erstwhile Mysore Land Reforms Act, 1961.

3. In this view of the matter, it is very difficult for this Court to accept the submission made at the bar that the petitioners have not made any admission before the Tribunal with regard to the claim of the tenancy by <sup>the</sup> deceased III respondent and the contesting respondents. Since the peti-

tioners have admitted the fact of tenancy of <sup>the</sup> deceased <sup>third respondent</sup> in respect of the land in question, <sup>therefore</sup> the question of conducting an enquiry under the provisions of the Act and rules referred to above, does not arise for consideration by this Court.

I do not find either illegality or the impugned <sup>in the impugned order</sup> ~~error~~ <sup>error apparent on the face of the record</sup> order suffers from ~~want of jurisdiction of the~~

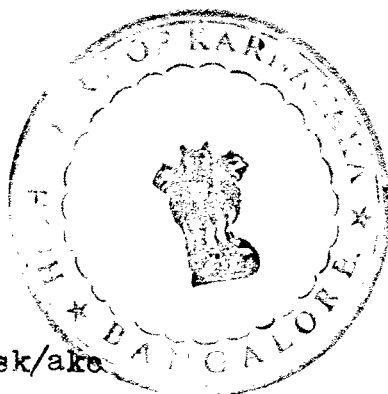
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~~Tribunal in passing the impugned order.~~

This Court can exercise its power under Article 226 and 227 of the Constitution of India only on either of the grounds referred to above exist.

4. In my view, the impugned order does not call for interference by this Court in exercise of its extra-ordinary and supervisory writ jurisdiction. Hence I pass the following order:

Writ petition is dismissed. No costs. Learned Addl. Government Advocate is permitted to file memo of appearance on behalf of R.1 and 2 within three weeks from today.



sk/ake

Sd/-  
JUDGE